

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10106JLT

)
ZHANNA CHIZHIK,)
Administratrix of the Estate)
of Grigory Chizhik,)
Plaintiff)
)
v.)
)
SEA HUNT BOATS, INC.,)
TROPICLAND MARINE)
AND TACKLE, INC., and)
GREGORY ZILBERMAN,)
Defendants.)
)

**DEFENDANT SEA HUNT BOATS, INC.'S STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant Sea Hunt Boats, Inc. ("Sea Hunt") submits the following undisputed facts as evidence in support of its motion for summary judgment:

1. In the Spring of 2003, Gregory Zilberman purchased a Sea Hunt Navigator 22 from Tropicland. Transcript of the Deposition Testimony of Gregory Zilberman, p. 16, attached to Sea Hunt's motion as "Exhibit A."
2. At the time that he took delivery of his Navigator 22, Zilberman noticed nothing wrong with his boat. Zilberman depo., pp. 34-35.
3. Prior to May 25, 2003, Zilberman had used his Navigator 22 to fish in Boston Harbor without incident. Zilberman depo., pp. 38, 40.
4. On May 25, 2003, Zilberman, Amir Lashgari and the plaintiff's decedent embarked on Zilberman's Navigator 22 in Weymouth, Massachusetts to fish in Boston Harbor. S

Zilberman depo., p. 49.

5. Zilberman steered his boat to several fishing spots, arriving eventually in an area outside Outer Brewster Island. Zilberman depo., pp. 53-54.
6. Neither Zilberman nor Lashgari observed any problem with the boat in several hours of before the subject accident. Zilberman depo., p. 54; Transcript of the Deposition Testimony of Amir Lashgari, p. 25, attached to Sea Hunt's motion as "Exhibit B."
7. Zilberman observed that the sea conditions were getting rougher in the area of Outer Brewster Island than they had been in the harbor, as he was getting out of the harbor. Zilberman depo., p. 61. They encountered 3' swells and waves up to 5' in height by Outer Brewster Island. Zilberman depo., p. 64.
8. At Outer Brewster Island, Zilberman left the helm and allowed the boat to drift as he and passengers attempted to cast their lines toward shore and into the surf. Zilberman depo., p. 54.
9. Zilberman was fishing facing the island with his back to the open ocean. Zilberman depo., p. 70.
10. The plaintiff's decedent was not wearing a personal flotation device, though one was available to him on the Navigator 22. Zilberman depo., p. 100.
11. The Navigator 22 capsized and Zilberman, Lashgari and the plaintiff's decedent were thrown into the water. Zilberman depo., p. 71.
12. Zilberman presumes that a large wave caused the Navigator 22 to capsize, though he does not know this to be so. Zilberman depo., pp. 72-73.
13. Zilberman does not know of any problem with the Navigator 22 which caused it to capsize.

and claims no expertise in this area. Zilberman depo., p. 94.

14. After the incident, Lashgari told news reporters and an investigator that a large wave caused the Navigator 22 to capsize. Lashgari depo., pp. 37-63.
15. The plaintiff's decedent expired after several minutes in the water holding on to an overturned boat. Zilberman depo., p. 82-85.
16. The Navigator 22 was lost at sea and not recovered. Zilberman depo., p. 94.
17. Zilberman purchased a second identical Navigator 22 which he has used without incident for several years fishing in Boston Harbor. Zilberman depo., pp. 95-96.
18. The plaintiff did not serve his expert witness disclosure and report before May 6, 2005 as required by the Federal Rules of Civil Procedure 26(a)(2) and by this Court's Order.

The Defendant,
SEA HUNT BOATS, INC.
By Its attorneys,



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CERTIFICATION OF SERVICE

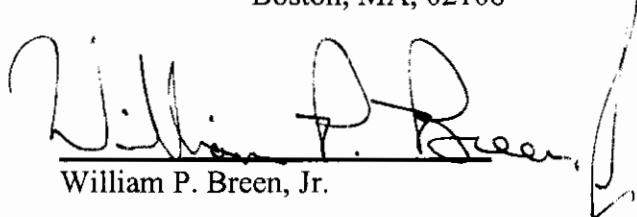
The undersigned attorney hereby certifies that on this 16th day of September 2005, she served a copy of the foregoing document, via first class mail, upon the following

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